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| IN RE: AREDIA® AND ZOMETA® PRODUCTS LIABILITY LITIGATION (MDL No. 1760) |) | No. 3:06-MDL-1760 |
| |) | |
| |) | JUDGE CAMPBELL |
| |) | |
| This Document Relates To: |) | MAGISTRATE JUDGE BROWN |
| |) | |
| Case Nos.: |) | |
| 3:08-CV-01178 (Rapa) |) | |
| |) | |

Novartis Pharmaceuticals Corporation (“NPC”) moves to dismiss plaintiff’s claims in the above-captioned matter pursuant to Federal Rule of Civil Procedure 4(m).¹ In support of this motion, NPC avers the following:

This action was transferred to this Court on December 10, 2008 by the Judicial Panel on Multidistrict Litigation pursuant to Conditional Transfer Order (CTO 83). *See* MDL Docket No. 1931. Plaintiff filed his Complaint on October 30, 2008 in the United States District Court for the Eastern District of Missouri, alleging injuries, including osteonecrosis of the jaw (“ONJ”), which allegedly resulted from treatment with NPC’s prescription medication Aredia[®]. *See* No. 3:08-cv-01178, Docket No. 1. February 27, 2009 was the 120th day after plaintiff filed his Complaint. To date, NPC has not been served a Complaint in this action. Nor has plaintiff requested an extension of time or identified any reason for failure to serve his Complaint.

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II. Dismissal Is Warranted for Failure to Comply with Federal Rule of Civil Procedure 4(m)

Under Federal Rule of Civil Procedure 4(m), a complaint and corresponding summons must be served on a defendant within 120 days after the filing of the complaint. Specifically, Rule 4(m) states:

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Pursuant to Rule 4(m), and as set forth above, plaintiff has failed to timely effect service on NPC.² Nor has plaintiff requested an extension of time or identified any reason for failure to comply with Rule 4(m).

For the foregoing reasons, NPC respectfully requests that this Court dismiss NPC without prejudice in this action and order any additional relief deemed appropriate and/or necessary.

² Absent service NPC has no obligation to respond to the complaint. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347, 350, 353 (1999) (service of process is critical initiating act against a defendant).

Respectfully submitted,

March 27, 2009

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CERTIFICATE OF SERVICE

I hereby certify that I have on this 27th day of March 2009 served a true and correct copy of the foregoing Motion of Novartis Pharmaceuticals Corporation to Dismiss Pursuant to Federal Rule of Civil Procedure 4(m), by operation of the Court's Electronic Case Filing System, on the following, including Plaintiffs' Liaison Counsel:

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